

Subject:           Comments on Report and Recommendations of the Standard Contract Subgroup Report

Great Bay Hydro Corporation ("Great Bay") submits the following comments on the Standard Contract Report and Form of Contract.

Report

1. Milestone Issues: Great Bay finds the proposed milestones to be acceptable.
2. Other Products: The report takes the position that all products should be included since the standard offer price represents the technology-specific revenue requirement for a project. That approach will be fair only if the Board orders technology-specific rates starting on September 30, 2009. If the Board allows the "default" standard offer prices in Act 45 to remain in force until January 15th, then the Other Products should only include the renewable energy credits since the default prices may not represent the full technology-specific revenue requirement. For example, the Cost Analysis Subgroup report found that the default standard offer price set in Act 45 for hydroelectric projects is lower than the technology-specific prices calculated using both the initial assumptions and the more conservative Department of Public Service assumptions.
3. Amendment of Contracts: Great Bay strongly disagrees with the suggestion of one participant that the Board have the authority to modify the terms of the contract. This would be devastating to the development of new projects. If the Board can change the terms of the contract at any point in time, then debt and equity financing would be nearly impossible to obtain or at best available only at greatly increased rates that reflect the risk of an unfavorable contract revision.

The suggestion that the Board can issue a request to suspend generation when it is desirable from a consumer perspective is also troubling and would make financing projects more difficult or even impossible. It is not clear what is meant by the parenthetical phrase in the report "provided that the Producer's investment-backed expectation interests can be honored". If this provision means that revenues will be guaranteed such that the equity and debt holders are fully repaid plus their interest and return on equity without taking any power, then this would clearly be of harm to customers since they would pay the full cost of the project without receiving any of the benefits of the energy that can be produced by the project. If this provision means that the equity portion of the project will be made whole then this will make it impossible for projects to obtain debt financing given that the project could lose its revenue stream at any time.

4. Subdivision of the Queue: As is apparent from the report, the question of a queue and a subdivision of the queue is a difficult one. Great Bay sees the merit in option c., offering the full 50 MW in the first round with a cap on any single technology. If the intent of Act 45 was to provide financial incentives for the development of diverse technologies such that the costs of these generating technologies come down over time, that purpose is best served by carving out a portion of the 50 megawatts for a number of technologies. If the Board were not to do so, there is a danger that one mature technology will dominate and the state of Vermont will not benefit from the development of less mature advanced technologies. Great Bay proposes that the entire 50 MW be made available starting upon the start of the standard offer contracting period but that there be the following division of installed capacity by technology:
  - Solar – 10 MW
  - Wind – 10 MW
  - Landfill or Agricultural Methane – 10 MW
  - Hydro – 10 MW
  - Other (Includes Biomass) – 10 MW
5. Queue Management: Great Bay supports the electronic filing of standard offer contracts. Great Bay agrees that the queue should be on a first come – first served basis upon the execution of the standard offer power purchase agreement and submission of relevant deposits and fees.

On September 4, 2009 two additional questions relating to queue management were issued for comment.

“(1) Act 45 states that the Board must, “No later than September 30, 2009, put into effect, on behalf of all Vermont retail electricity providers, standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less.” Section 8005(b)(2). Does this language require that the standard offer program must be open to developers immediately after September 30, 2009, or does the Board have discretion to open the program within a reasonable time (for example, no more than a month) after September 30 in order to provide the SPEED Facilitator sufficient time to develop any necessary forms and processes after reviewing the Board order? “

The statutory language regarding the availability of the standard offer power purchase agreement is clear that the standard offer program must be available to projects on that date. However, given that the Board will not issue its order on the specifics of the standard offer program until that date, there must be some period of time for the contract to be modified, if needed, to reflect the Board’s order relating to the open issues raised by the standard offer contract subgroup. Great Bay suggests that the

standard offer contract program be ready for implementation 30 days from the Board's order.

“(2) Pursuant to Act 45, “standard offers shall be available until the cumulative plant capacity of all such resources commissioned in the state that have accepted a standard offer under this subdivision (b)(2) equals or exceeds 50 MW. . . .” Section 8005(b)(2). If the Board creates a queue, can the SPEED Facilitator stop issuing standard offers once 50 MW are in the queue?”

Once the total of contracted and retail utility projects reaches 50 MW of capacity, the SPEED Facilitator should continue to accept projects and place them on a waiting list. In order to be placed on the waiting list, projects should be required to complete all of the information required by the standard offer power purchase agreement, execute that agreement and submit it to the SPEED Facilitator. The SPEED Facilitator would hold the agreements for wait-listed projects in the order received but not execute them. Should a previously contacted project drop out of the process before commissioning, a wait-listed project will then be offered the chance to be contracted. The project can either accept the SPEED Facilitator's offer or withdraw from the queue. If the project accepts the offer, it would then submit the required fees and be bound by the contract.

6. Administrative Fees: Great Bay supports the idea of an administrative fee and a deposit fee. The deposit fee should be a sliding fee based upon project size using a fee of \$10/kw. The report makes a logical argument for the deposit fee being refundable. Great Bay agrees that this will encourage projects that are no longer viable from remaining in the queue. To this end, Great Bay suggests that the refund be tied to schedule; i.e. 100% refund upon project commissioning or withdrawal up to 1 year from contract execution, 75% refund upon withdrawal up to 2 years from contract execution and 50% refund upon withdrawal up to 3 years from contract execution.
7. Provision of Cost Data: Great Bay agrees with the position that cost data not be provided but that the project would abide by any Board order and rules governing disclosure of commercially sensitive information and that such information would be regarded as trade secrets.
8. Utility Projects: Utility projects should be treated the same as non-utility projects. Utility projects should be required to provide all of the information required by the attachments to the standard offer power purchase agreement to the SPEED Facilitator. Utility projects also should be required to submit fees and deposits on the same basis(including refund) as non-utility projects.

### Further Board Approvals

While not discussed in the report, Great Bay recommends that the Board's order approving the standard contract eliminate the need for the contracting parties to seek any further Board approval of the contract.

### Draft Standard Contract

6. Administrative Fee and Deposit: Revise as follows "Producer shall tender to Facilitator any administrative fee and deposit required. The deposit and the interest earned upon the deposit shall be fully refundable to the Producer upon Commissioning or, in the case of a terminated project, partially refundable based on the following schedule:

- Termination of contract prior to one year from the Effective Date – 100% Refundable
- Termination of contract prior to two years from the Effective Date – 75% Refundable
- Termination of contract prior to three years from the Effective Date – 50% Refundable"

10. Exclusivity: Great Bay strongly recommends that the last sentence of this Section be deleted. In essence, this provision prevents the Producer from entering into any other sales arrangement for the output of the facility for the remainder of the contract term if the contract is terminated early. This is unnecessary and unfair to the Producer since only the SPEED Facilitator has the right to terminate the contract early. The Producer could be in a position where, for example, an issue arises that results in the loss of a Regulatory Approval needed for operation. This would be considered a default and the Producer then has 30 days to cure, which is usually not enough time to resolve a permit issue. If not cured after 30 days, the contract would be terminated by the SPEED Facilitator. Once the Producer is able to resolve the permit issue it would then be precluded from selling any of the output of the project to anyone for the remainder of the twenty or more year contract period. Similarly, if the Producer suffered a major mechanical or civil works failure that required more than a year to permit, procure equipment and repair, the Producer would be in default and, if unable to cure within thirty days, the contract would terminate. Again the Producer would be precluded from selling the output of the repaired facility to any party for the remainder of the twenty or more year contract period.

13. Payment to Producer: This provision obligates the Facilitator to pay the Producer the amounts owed "within 45 days of the end of each billing period". Assuming a monthly billing period, this means that payment for Electricity generated on the first day

of a given month would not be paid for approximately 75 days. Great Bay believes that this time frame should be reduced to 15 days. Given the recommendation of the Settlement Subgroup that the standard offer projects be treated as “load reducers” in the initial VELCO settlement which occurs within 36 hours of the operating day, it follows that the accounting for the billing period can be finalized relatively quickly.

15. Events of Default: Great Bay recommends that the phrase “by Producer” be inserted after “Any breach”. In Item b. Great Bay recommends that the phrase “after Commissioning” be inserted after “any Regulatory Approval”. Great Bay also suggests that this provision be made reciprocal, to address any contract breach by the Facilitator.